

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6662 of 1998

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MADHU RAM SWAROOP ANAND MOTHEROF DETENUE

Versus

COMMISSIONER OF POLICE

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Appearance:

MS SM AHUJA for Petitioner

MR CC BHALJA,APP, for respondents

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 28/04/99

ORAL JUDGEMENT

1. This is the petition filed by the mother of the detenu, Shri Dharmendra alias Dharmu Ramswaroop Anand Punjabi, challenging the order of detention passed under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 by the Commissioner of Police, Surat City.

2. Although the memo of the present petition raises a number of grounds, I shall deal with the only ground on

which emphasis has been placed and substantial arguments advanced by learned counsel for the petitioner. In this context learned counsel for the petitioner emphatically submits that the grounds of detention would at first sight appear to indicate that the detaining authority has referred to and relied upon two criminal cases. The first case referred to in the grounds of detention pertains to Crime Register No.283/97. The second case admittedly referred to and relied upon arises from Crime Register No.336/98. There is no controversy so far as these two cases are concerned.

3. However, the contention arises from further observations made by the detaining authority in the grounds of detention in internal page 4 of the said grounds, wherein it is stated that he has been released on bail in the case at serial no.1 in Annexure I to the grounds of detention, and further that the detenu is in judicial custody in respect of the case at serial no.2 in the said Annexure I to the grounds of detention, and also that the detenu is under police remand in respect of case at Crime Register No.357/98. Thus, the first aspect is that although in the earlier part of grounds of detention only the first two criminal cases have been referred to (and apparently relied upon), in the subsequent part of the grounds of detention a third case has been mentioned viz. the case at Crime Register No.357/98. The crux of the matter is as to whether the third case viz. the one arising from Crime Register No.357/98 is merely a casual and passing reference or whether the same has been referred to and relied upon by the detaining authority.

4. The detaining authority has filed two affidavits in reply in the present petition - one sworn on 9th March 1999 and the second one sworn on 23rd March 1999. In the first of these affidavits, in para 6 thereof it is emphatically asserted that the detaining authority has relied upon only the two cases (the first two discussed hereinabove and mentioned in the grounds of detention), whereas the third case vide C.R. No.357/98 "was not at all taken into consideration for passing the order". In the context of this language used in the affidavit it is pertinent to note that it is one thing to say that it was considered and not found to be relevant and was therefore ignored and not relied upon, whereas it is an entirely different thing to say that it was not at all considered for passing the order. The second affidavit filed by the detaining authority does not improve the matter at all. In the last paragraph of the second affidavit the detaining authority states that the mention of the offence vide C.R. No.357/98 in the grounds of detention,

and supplying the relevant record thereof to the detenu, has no nexus with the passing of the detention order, and "the said is mentioned only with a view to show my awareness to the fact that the detenu was in police custody at the time of passing of detention order in respect of the said offence."

5. The contention has to be considered in the context of the assertion made in the affidavit in reply. From the clear stand taken by the detaining authority it appears that the third case was within the awareness of the detaining authority, and has been mentioned in the grounds of detention to indicate the awareness of the detaining authority to the fact that the detenu was in police custody. However after admitting and asserting that the detaining authority was aware of this fact, and then to assert at the same time that the third case did not enter into his consideration for any other purpose, and also to assert that it was not relied upon for the purpose of passing the order of detention, is clearly an inconsistency in terms. Since the third case was on the file of the detaining authority, since it was read by the detaining authority, and since the detaining authority asserts that he was aware of the said case, obviously it cannot then be urged that it was outside his mind entirely.

6. If it was within the consciousness of the detaining authority, it must necessarily be presumed that it has entered into consideration and has played its own part in enabling the detaining authority to achieve the subjective satisfaction as to the fitness of the detenu to be detained under the impugned order. It cannot, then be simultaneously urged that although the said fact was within his knowledge, it was read and considered, but ignored by not taking the same into consideration while passing the order of detention. Such submission can only be accepted, and such situation could only come to exist in the mind of the detaining authority only if there was non-application of mind.

7. The net conclusion which can be drawn from this situation is that the impugned order suffers from non-application of mind and/or that the subjective satisfaction is vitiated on account of the fact that the mind of the detaining authority was bound to be affected by what the detaining authority himself has stated to be an irrelevant consideration.

8. The impugned order of detention is, therefore, required to be quashed and set aside and it is

accordingly so directed.

9. Accordingly this petition requires to be allowed.

The detenu is directed to be released from custody forthwith, unless otherwise required. Rule is made absolute accordingly.

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